

Message Text

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CARACAS FOR LOS DELEGATION

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TAGS: ICJ, PLOS, IC, NO, UK, GW

SUBJECT: INTERNATIONAL COURT OF JUSTICE JUDGMENT IN FISH-
ERIES JURISDICTION CASE

REF: OSLO 3647

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1. ICJ RULED ON ICELAND'S UNILATERAL EXTENSION OF EXCLUSIVE FISHERIES ZONE ON BASIS OF INTERNATIONAL LAW THAT IS GENERALLY APPLICABLE, NOT ON BASIS OF ANY SPECIAL AGREEMENTS APPLICABLE TO THESE CASES. ALTHOUGH THERE MAY BE SOME SUPPORT FOR ELIASSEN'S INTERPRETATION SINCE COURT DID NOT DIRECTLY RULE ON FIRST UK SUBMISSION (I.E., THAT ICELAND'S ACTION ILLEGAL ON ITS FACE), READING JUDGMENT OF THE COURT AS A WHOLE WE DO NOT CONSIDER HIS INTERPRETATION CORRECT.

2. ICJ FOUND THAT TWO RULES OF CUSTOMARY INTERNATIONAL LAW HAD DEVELOPED IN RECENT YEARS: (1) A STATE MAY CLAIM EXCLUSIVE FISHERIES JURISDICTION UP TO 12-MILE LIMIT FROM BASELINES, AND, (2) COASTAL STATE HAS PREFERENTIAL RIGHTS OF FISHING IN ADJACENT WATERS IN SITUATION OF SPECIAL DEPENDENCE ON ITS COASTAL FISHERIES. UK CASE PARA 52; FRG CASE PARA 44. COURT FURTHER FOUND THAT METHOD FOR COASTAL STATE TO IMPLEMENT SUCH PREFERENTIAL RIGHTS IS BILATERAL OR MULTILATERAL AGREEMENT WITH OTHER STATES CONCERNED, AND IN CASE OF DISPUTE, THROUGH MEANS OF PEACEFUL SETTLEMENT AS PROVIDED IN ARTICLE 33 OF THE UNITED NATIONS CHARTER. UK CASE PARA 57; FRG CASE PARA 49. COURT FOUND THAT ICELANDIC REGULATIONS CONSTITUTED CLAIM TO EXCLUSIVE FISHING RIGHTS

IN 50-MILE ZONE AND THUS WENT BEYOND CONCEPT OF PREFERENTIAL RIGHTS. UK CASE PARA 61; FRG CASE PARA 53. "ICELAND'S UNILATERAL ACTION THUS CONSTITUTES AN INFRINGEMENT OF THE PRINCIPLE ENSHRINED IN ARTICLE 2 OF THE 1958 GENEVA CONVENTION ON THE HIGH SEAS WHICH REQUIRES THAT ALL STATES, INCLUDING COASTAL STATES, IN EXERCISING THEIR FREEDOM OF FISHING, PAY REASONABLE REGARD TO THE INTERESTS OF OTHER STATES. UK CASE PARA 67; FRG CASE 59. ICJ HELD ICELAND COULD NEITHER ASSERT NOR ENFORCE EXCLUSIVE FISHERIES JURISDICTION AS AGAINST UK OR FRG, BOTH OF WHICH HAD ESTABLISHED FISHING RIGHTS IN THE AREA. UK CASE PARAS 67, 71, 79; FRG CASE PARAS 59, 63, 77. COURT ALSO HELD THAT PARTIES UNDER A MUTUAL OBLIGATION TO UNDERTAKE NEGOTIATIONS IN GOOD FAITH TO ARRIVE AT EQUITABLE SOLUTION TAKING INTO ACCOUNT ICELAND'S PREFERENTIAL RIGHTS BEYOND 12 MILES AS WELL AS ESTABLISHED RIGHTS OF UK AND FRG. UK CASE PARAS 73-79; FRG CASE PARAS 65-69, 77.

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3. COURT'S RULING ON MERITS WAS BASED ON PRINCIPLES OF CUSTOMARY INTERNATIONAL LAW AND NOT ON SPECIFIC AGREEMENTS BETWEEN PARTIES. 1961 EXCHANGE OF NOTES BETWEEN ICELAND AND UK AND ICELAND AND FRG PROVIDED BASIS FOR JURISDICTION OF COURT (SEE FEB. 1973 JURISDICTION CASES), BUT NOT FOR SUBSTANTIVE JUDGMENT. CF. UK CASE PARAS 47-48; FRG CASE PARAS 39-40. 1973 INTERIM AGREEMENT BETWEEN ICELAND AND

UK FOUND TO BE PROVISIONAL IN NATURE (IT HAD 2-YEAR TERM) AND NOT TO PREJUDICE RIGHTS OF PARTIES; COURT STATED THAT IT WAS THEREFORE APPROPRIATE TO PRONOUNCE ON THE RIGHTS OF THE PARTIES UNDER EXISTING INTERNATIONAL LAW TO GUIDE PARTIES IN THEIR ACTIONS AFTER TERMINATION OF THE INTERIM AGREEMENT. UK CASE PARA 40. THERE WAS NO SUCH INTERIM AGREEMENT BETWEEN ICELAND AND FRG.

4. WHILE IT CLEAR THAT COURT RULED ON MERITS ON BASIS OF APPLICABLE INTERNATIONAL LAW, COURT USED CAREFULLY CHOSEN LANGUAGE AND AVOIDED MAKING BROAD GENERAL STATEMENTS WITH REGARD TO LEGALITY OF ICELAND'S ACTION. WHILE COURT SAID ICELAND'S ACTION AN "INFRINGEMENT" OF "PRINCIPLE" IN ARTICLE 2 OF 1958 CONVENTION, IT DID NOT EXPLICITLY CALL THAT PRINCIPLE A RULE OF CUSTOMARY INTERNATIONAL LAW, BUT RATHER SAID THE DRAFTERS CONSIDERED THE CONVENTION "GENERAL- LY DECLARATORY OF ESTABLISHED PRINCIPLES OF INTERNATIONAL LAW." UK CASE PARA 50; FRG CASE PARA 42. NEVERTHELESS, SINCE ICELAND NOT A PARTY TO 1958 CONVENTION ON THE HIGH SEAS, THE COURT IN ORDER TO ARRIVE AT ITS HOLDING, MUST HAVE ALSO CONSIDERED THE PRINCIPLE IN ARTICLE 2 TO BE CUSTOMARY INTERNATIONAL LAW. THUS, ICJ IN SUBSTANCE FOUND ICELAND IN VIOLATION OF CUSTOMARY INTERNATIONAL LAW. IN ADDITION, COURT INDICATED ASSERTION OR ENFORCEMENT OF EX-

CLUSIVE FISHERIES ZONE AS AGAINST UK AND FRG ILLEGAL, BUT DID NOT MAKE STATEMENTS WITH REGARD TO OTHER STATES. DESPITE THIS, IT IS CLEAR TO US FROM JUDGMENT THAT COASTAL STATE HAS NO RIGHT TO ASSERT EXCLUSIVE (AS OPPOSED TO PRE- FERENTIAL) FISHERIES ZONE BEYOND 12 MILES. IT ALSO IS CLEAR THAT ACTIONS OF COASTAL STATES IN ENFORCING SUCH ZONE AS AGAINST ANY OTHER STATE WITH ESTABLISHED RIGHTS ARE IL- LEGAL. INGERSOLL

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